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**BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Mark J. Luciano, Ph.D.
6602 Norman Lane
San Diego, CA 92120

Psychologist's License, No. PSY 8846

Respondent.

Case No. W 197


OAH No.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Psychology of the Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on March 2, 2001.

It is so ORDERED January 5, 2001.



FOR THE BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
Martin R. Greenberg, Ph.D., President

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of the State of California
2 STEVEN H. ZEIGEN, State Bar No. 60225
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10 **BEFORE THE**
BOARD OF PSYCHOLOGY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. W 197

13 MARK J. LUCIANO, Ph.D.
6602 Norman Lane
14 San Diego, California 92120

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Psychologist's License No. PSY 8846
16

17 Respondent.
18

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Complainant Thomas S. O'Connor is the Executive Officer of the Board of
23 Psychology who brought this action solely in his official capacity and is represented in this
24 matter by Bill Lockyer, Attorney General of the State of California, by Steven H. Zeigen, Deputy
25 Attorney General.

26 2. Respondent is representing himself in this proceeding and has chosen not
27 to exercise his right to be represented by counsel.

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3. On or about February 4, 1985, the Board of Psychology issued Psychologist's License No. PSY 8846 to Mark J. Luciano, Ph.D. ("Respondent"). The license will expire on July 31, 2002, unless renewed. The license did, however, become inactive on August 1, 2000.

JURISDICTION

4. Accusation No. W 197, was filed before the Board of Psychology of the Department of Consumer Affairs, ("Board"), and is currently pending against Respondent. The Accusation, together with all other statutorily required documents, was duly served on Respondent on or about October 20, 2000. A copy of Accusation No. W 197 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and fully understands the nature of the charges and allegations in the Accusation and the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation, the right to be represented by counsel, at his own expense, the right to confront and cross-examine the witnesses against him, the right to present evidence and to testify on his own behalf and to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands that the charges and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Psychologist's License No. PSY 8846.

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1 9. Respondent admits the truth of each and every charge and allegation in the
2 Accusation No. W197.

3 10. Respondent agrees that his Psychologist's License No. PSY 8846 is
4 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set
5 forth in the Order below.

6 RESERVATION

7 11. The admissions made by Respondent herein are only for the purposes of
8 this proceeding, or any other proceedings in which the Board of Psychology or other professional
9 licensing agency is involved, and shall not be admissible in any other criminal or civil
10 proceeding.

11 CONTINGENCY

12 12. This stipulation shall be subject to the approval of the Board. Respondent
13 understands and agrees that Board of Psychology's staff and counsel for Complainant may
14 communicate directly with the Board regarding this stipulation and settlement, without notice to
15 or participation by Respondent. If the Board fails to adopt this stipulation as its Order, except for
16 this paragraph the Stipulated Settlement and Disciplinary Order shall be of no force or effect, it
17 shall be inadmissible in any legal action between the parties, and the Board shall not be
18 disqualified from further action in this matter by virtue of its consideration of this stipulation.

19 13. The parties agree that facsimile copies of this Stipulated Settlement and
20 Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as
21 original Stipulated Settlement and Disciplinary Order and signatures.

22 14. In consideration of the foregoing admissions and stipulations, the parties
23 agree that the Board shall, without further notice or formal proceeding, issue and enter the
24 following Disciplinary Order:

25 DISCIPLINARY ORDER

26 **IT IS HEREBY ORDERED** that Psychologist's License No. PSY 8846 issued
27 to Respondent Mark J. Luciano, Ph.D., is revoked. However the revocation is stayed and
28 Respondent is placed on probation for three (3) years on the following terms and conditions.

1 1. PSYCHOLOGICAL EVALUATION Within 90 days of the effective
2 date of this Decision and on a periodic basis thereafter as may be required by the Board or its
3 designee, respondent shall undergo a psychological evaluation (and psychological testing, if
4 deemed necessary) by a Board-appointed California-licensed psychologist. Respondent shall
5 sign a release which authorizes the evaluator to furnish the Board a current DSM IV diagnosis
6 and a written report regarding the respondent's judgement and/or ability to function
7 independently as a psychologist with safety to the public, and whatever other information the
8 Board deems relevant to the case. The completed evaluation is the sole property of the Board.

9 If the Board concludes from the results of the evaluation that respondent's ability
10 to practice psychology safely is impaired due to mental illness, respondent shall immediately
11 cease accepting new patients and, in accordance with professional standards, shall appropriately
12 refer/terminate existing patients within 30 days and shall not resume practice until a board-
13 appointed evaluator determines that respondent is safe to practice. During this suspension
14 period, probation will be tolled and will not apply to the reduction of this probation period.

15 If ongoing psychotherapy is recommended in the psychological evaluation, the
16 Board will notify respondent in writing to submit to such therapy and to select a psychotherapist
17 for approval by the Board or its designee within 30 days of such notification. The therapist shall
18 1) be a California-licensed psychologist with a clear and current license; 2) have no previous
19 business, professional, personal or other relationship with respondent; 3) not be the same person
20 as respondent's practice monitor. Frequency of psychotherapy shall be determined upon
21 recommendation of the treating psychotherapist with approval by the Board or its designee;
22 however, psychotherapy shall, at a minimum, consist of one one-hour session per week.
23 Respondent shall continue psychotherapy until released by the approved psychologist and
24 approved by the Board or its designee. The Board or its designee may order a re-evaluation upon
25 receipt of the therapist's recommendation.

26 Respondent shall execute a release authorizing the therapist to provide to the
27 Board any information the Board or its designee deems appropriate, including quarterly reports
28 of respondent's therapeutic progress. Respondent shall furnish a copy of this Decision to the

1 therapist. If the therapist believes the respondent cannot continue to independently render
2 psychological services, with safety to the public, he/she shall notify the Board immediately.

3 Respondent shall pay all costs associated with the psychological evaluation and
4 ongoing psychotherapy. Failure to pay costs will be considered a violation of the probation
5 order.

6 2. PRACTICE MONITOR Within 90 days of the effective date of this
7 Decision, respondent shall submit to the Board or its designee for prior approval, the name and
8 qualifications of a psychologist who has agreed to serve as a practice monitor/billing monitor.
9 The monitor shall 1) be a California-licensed psychologist with a clear and current license; 2)
10 have no prior business, professional, personal or other relationship with respondent; and 3) not be
11 the same person as respondent's therapist. The monitor's education and experience shall be in
12 the same field of practice as that of the respondent.

13 Once approved, the monitor shall submit to the Board or its designee a plan by
14 which respondent's practice shall be monitored. Monitoring shall consist of a least one hour per
15 week of individual face to face meetings and shall continue during the entire probationary period.
16 The respondent shall provide the monitor with a copy of this Decision and access to respondent's
17 fiscal and/or patient records. Respondent shall obtain any necessary patient releases to enable the
18 monitor to review records and to make direct contact with patients. Respondent shall execute a
19 release authorizing the monitor to divulge any information that the Board may request. It shall
20 be respondent's responsibility to assure that the monitor submits written reports to the Board or
21 its designee on a quarterly basis verifying that monitoring has taken place and providing an
22 evaluation of respondent's performance.

23 Respondent shall notify all current and potential patients of any term or condition
24 of probation which will affect their therapy or the confidentiality of their records (such as this
25 condition which requires a practice monitor/billing monitor). Such notifications shall be signed
26 by each patient prior to continuing or commencing treatment.

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1 If the monitor quits or is otherwise no longer available, respondent shall obtain
2 approval from the Board for a new monitor within 30 days. If no new monitor is approved within
3 30 days, respondent shall not practice until a new monitor has been approved by the Board or its
4 designee. During this period of non-practice, probation will be tolled and any period of non-
5 practice shall not apply to the reduction of this probationary period. Respondent shall pay all
6 costs associated with this monitoring requirement. Failure to pay these costs shall be considered
7 a violation of probation.

8 3. RESTITUTION Within 90 days of the effective date of this Decision,
9 respondent shall provide proof to the Board or its designee of restitution in the amount of
10 \$ 13,319 paid to the Contact Resource Management Directorate, Tri-Care Management Activity
11 as ordered by United States District Judge Jeffrey T. Miller on February 8, 1999, in case number
12 98CR2683, in the United States District Court for the Southern District of California.

13 Failure to pay restitution in the manner ordered by Judge Miller shall be
14 considered a violation of probation.

15 4. CONTINUING EDUCATION In addition to the hours of continuing
16 education required for license renewal, Respondent shall take and successfully complete at
17 least 12 additional hours of continuing education each year of probation in the following area(s):
18 billing. Such continuing education courses must be pre-approved by the Board or its designee.

19 Within 90 days of the effective date of this Decision, respondent shall submit to
20 the Board or its designee for its prior approval the course designed to satisfy this additional
21 continuing education requirement.

22 5. ETHICS COURSE Within 90 days of the effective date of this Decision,
23 respondent shall submit to the Board or its designee for prior approval a course in laws and ethics
24 as they relate to the practice of psychology. Said course must be successfully completed at an
25 accredited educational institution or through a provider approved by the Board's accreditation
26 agency for continuing education credit. Said course must be taken and completed within one
27 year from the effective date of this Decision. The cost associated with the law and ethics course
28 shall be paid by the respondent.

6. INVESTIGATION/ENFORCEMENT COST RECOVERY Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$1,500 within the first year of probation. Such costs shall be payable to the Board of Psychology. Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs

7. PROBATION COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year (July 1 - June 30). Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of the responsibility to repay investigation and enforcement costs

8. OBEY ALL LAWS Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

9. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

10. PROBATION COMPLIANCE Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned District Office of the Medical Board of California or other designated probation monitor. Respondent shall contact the assigned probation officer regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert evaluators.

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1 11. INTERVIEW WITH BOARD OR ITS DESIGNEE Respondent shall
2 appear in person for interviews with the Board or its designee upon request at various intervals
3 and with reasonable notice.

4 12. CHANGES OF EMPLOYMENT Respondent shall notify the Board in
5 writing, through the assigned probation officer, of any and all changes of employment, location,
6 and address within 30 days of such change.

7 13. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
8 STATE NON-PRACTICE In the event respondent should leave California to reside or to
9 practice outside the State or for any reason should respondent stop practicing psychology in
10 California, respondent shall notify the Board or its designee in writing within ten days of the
11 dates of departure and return or the dates of non-practice within California. Non-practice is
12 defined as any period of time exceeding thirty days in which respondent is not engaging in any
13 activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of
14 temporary or permanent residency or practice outside California or of non-practice within
15 California will not apply to the reduction of this probationary period., although the Board may
16 allow respondent to complete certain terms of probation that are not associated with active
17 practice.

18 14. EMPLOYMENT AND SUPERVISION OF TRAINEES If respondent is
19 licensed as a psychologist, he shall not employ or supervise or apply to employ or supervise
20 psychological assistants, interns or trainees during the course of this probation. Any such
21 supervisory relationship in existence on the effective date of this probation shall be terminated
22 by respondent and/or the Board.

23 15. VIOLATION OF PROBATION If respondent violates probation in any
24 respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke
25 probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to
26 Revoke Probation is filed against respondent during probation, the Board shall have continuing
27 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
28 is final. No Petition for Modification or Termination of Probation shall be considered while

1 there is an Accusation or Petition to Revoke Probation pending against respondent.

2 16. COMPLETION OF PROBATION Upon successful completion of
3 probation, respondent's license shall be fully restored.

4 ACCEPTANCE

5 I have carefully read the above Stipulated Settlement and Disciplinary Order, and
6 I fully understand the terms and conditions and other matters contained therein, I understand the
7 effect this stipulation will have on my Psychologist's License, No. PSY 8846. I enter into this
8 Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the
9 Disciplinary Order and Decision of the Board of Psychology. I further agree that a facsimile
10 copy of this Stipulated Settlement and Disciplinary Order, including facsimile copies of
11 signatures, may be used with the same force and effect as the originals.

12 DATED: 11/15/00.

13  PH.D.

14 MARK J. LUCIANO, Ph.D.
15 Respondent

16
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Psychology of the Department of Consumer Affairs.

20 DATED: Dec. 7, 2001.

21 BILL LOCKYER, Attorney General
22 of the State of California

23 

24 STEVEN H. ZEIGEN
25 Deputy Attorney General

26 Attorneys for Complainant

Exhibit A:
Accusation, Case No. W 197

1 BILL LOCKYER, Attorney General
of the State of California
2 STEVEN H. ZEIGEN, State Bar No. 60225
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8 Attorneys for Complainant

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10 **BEFORE THE**
11 **BOARD OF PSYCHOLOGY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. W 197

14 MARK J. LUCIANO, Ph.D.
6602 Norman Lane
15 San Diego, California 92120

ACCUSATION

16 Psychologist's License No. PSY 8846

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Thomas S. O'Connor ("Complainant") brings this Accusation solely in his
22 official capacity as the Executive Officer of the Board of Psychology, Department of Consumer
23 Affairs.

24 2. On or about February 4, 1985, the Board of Psychology issued
25 Psychologist's License Number PSY 8846 to Mark J. Luciano, Ph.D., ("Respondent"). The
26 Psychologist's License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on July 31, 2002, unless renewed. The license did, however, become
28 inactive on August 1, 2000.

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JURISDICTION

3. This Accusation is brought before the Board of Psychology ("Board"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 2960 of the Code states:

The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

" ...

"(r) ..."

5. Section 125.3 of the Code states, in pertinent part, that a Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 2964.6 provides that an administrative disciplinary decision imposing terms of probation may include a requirement that the licensee pay the monetary costs of the probation monitoring.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent is subject to disciplinary action under section 2960(a) of the Business and Professions Code in that on February 8, 1999, respondent was sentenced in Federal court for his conviction of making false claims to the United States in violation of 18 U.S.C. Secs. 287 and 2. The circumstances are as follows:

a. On or about September 30, 1998, an information was filed against respondent in the United States District Court, Southern District of California, alleging that between September 1991 and August 1996 respondent made false claims to the

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) in the amount of \$24,140. 00.

b. On or about September 30, 1998, respondent pled guilty to the charge.

c. On or about February 8, 1999, United States District Judge Jeffrey T. Miller placed respondent on three years probation and, among other conditions, ordered respondent to pay \$13, 319.00 in restitution.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Psychology issue a decision:

1. Revoking or suspending Psychologist's License Number PSY 8846, issued to Mark J. Luciano, Ph.D.;

2. Ordering Mark J. Luciano, Ph.D., to pay the Board of Psychology the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: October 17, 2000.



THOMAS S. O'CONNOR
Executive Officer
Board of Psychology
Department of Consumer Affairs
State of California
Complainant

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